

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
MAR 23 2005  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
Deputy



C.A. NO. 3-05CV0731-B

## Page 1

3. OneBeacon admits the allegations in Paragraph 20 of Don's Building Supply's counter-claim.

4. With respect to the allegations in Paragraph 21 of Don's Building Supply's counter-claim, OneBeacon admits it initially agreed to reimburse Don's Building Supply's legal fees and costs of litigation under a reservation of rights. OneBeacon denies the remaining allegations in Paragraph 21 of Don's Building Supply's counter-claim.

5. OneBeacon denies the allegations in Paragraph 22 of Don's Building Supply's counter-claim.

6. OneBeacon denies the allegations in Paragraph 23 of Don's Building Supply's counter-claim.

7. OneBeacon denies the allegations in Paragraph 24 of Don's Building Supply's counter-claim.

8. OneBeacon denies the allegations in Paragraph 25 of Don's Building Supply's counter-claim and the prayer for relief.

## **II. AFFIRMATIVE DEFENSES**

9. The OneBeacon Policies do not cover the damages sustained by the Claimants in the Underlying Litigation. First, any alleged property damage occurred and/or manifested itself after the Policies ended. More specifically, the alleged property damage in the Underlying Litigation were plead by Claimants as "latent" property damage and therefore not discovered during OneBeacon's Policy Periods since the two year statute of limitation would otherwise bar the claims in the Underlying Litigation. The Underlying Litigation accordingly states the earliest

possible date for manifestation of the alleged property damage according to the filing date of the original petition and the discovery rule's two year statute of limitation.

10. The OneBeacon Policies do not provide coverage for any damage which is excluded by the Policy, including without limitation, the following exclusions:

This insurance does not apply to:

j. "Property damage" to:

\* \* \*

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it....

k. "Property damage" to "your product" arising out of it or any part of it.

l. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises is performed on your behalf by a subcontractor.

m. Damage to Impaired Property or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of a sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

11. The OneBeacon Policies do not provide coverage for economic losses.

12. The Policies do not provide coverage to the extent the Underlying Litigation does not allege property damage caused by an “occurrence” as defined in and required by the Policies.

13. The Policies do not provide coverage to the extent the Underlying Litigation seeks damages which do not constitute “property damage” as defined in and required by the Policies.

14. The Policies do not provide coverage in an amount greater than the limits set forth in the Policies.

15. The OneBeacon Policies do not provide coverage for contractual liability for “bodily injury” or “property damage” for which the Insured “is obligated to pay damages by reason of the assumption of liability in a contract or agreement.”

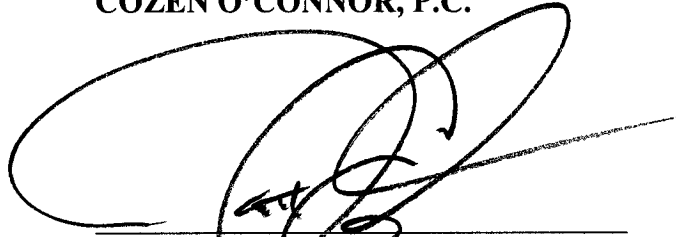
16. Any coverage under the Policy is limited by the OneBeacon Policy provisions relating to “other insurance.”

17. There may be other provisions of the OneBeacon Policies which serve to preclude or limit coverage for the Underlying Litigation at issue, none of which are waived by not being specifically pled herein.

**FOR THE REASONS STATED,** Plaintiff OneBeacon Insurance Company prays that, upon final trial and hearing hereof, Defendant Don’s Building Supply take nothing against it, and that OneBeacon recover its costs, fees, expenses, and general relief.

Respectfully submitted,

**COZEN O'CONNOR, P.C.**

A large, stylized handwritten signature in black ink, appearing to read 'M. Jarrett Coleman', is written over a horizontal line.

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**ATTORNEY-IN-CHARGE FOR PLAINTIFF  
ONEBEACON INSURANCE COMPANY.**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above document has been forwarded by certified mail, return receipt requested, on this the 23rd day of May, 2005 to:

Thomas B. Alleman  
WINSTEAD SECHREST & MINICK P.C.  
1201 Elm Street, Suite 5400  
Dallas, Texas 75270



M. Jarrett Coleman

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